

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

ORDER
05-CR-613(JBW)

LINUS NWAIGWE,

Defendant.

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Linus Nwaigwe moves to have his attorney, Donna R. Newman, Esq., appointed pursuant to the Criminal Justice Act (“CJA”), nunc pro tunc to June 6, 2007. By order dated July 10, 2007, Senior United States District Judge Jack B. Weinstein entered an order stating that Nwaigwe’s motion would be granted after completion of a financial affidavit if the facts indicated that Nwaigwe qualifies for CJA representation. Docket Entry 433.

A defendant who is “financially unable to obtain adequate representation” is entitled to counsel appointed by the court. 18 U.S.C. § 3006A(a). Neither the statute itself nor the case law construing it sets a particular income level or an amount of assets that disqualifies a defendant. *See, e.g., United States v. Parker*, 439 F.3d 81, 97 (2d Cir. 2006). To qualify for court-appointed counsel, a defendant need not establish that he is indigent. *United States v. O’Neil*, 118 F.3d 65 (2d Cir. 1997). Rather, courts must consider the specific facts presented in each case and determine whether a defendant is able to pay for adequate representation without substantial hardship to himself or his family. *Parker*, 439 F.3d at 97.

I held a conference in this case on August 14, 2007. At that time, I invited defendant to submit an ex parte affidavit, with supporting exhibits, setting forth the basis for his claim of financial need. I also directed that defendant and his spouse waive any privacy rights with respect to their financial information so that Pre-Trial Services could conduct an investigation of

defendant's eligibility for court-appointed counsel.

I have reviewed the affidavit and exhibits submitted by defendant ex parte, as well as a report prepared by Pre-Trial Services dated September 21, 2007. I find that defendant is unable to pay for adequate representation without substantial hardship to himself or his family, and that he qualifies for court-appointed counsel. Nwaigwe's motion to have his attorney, Donna R. Newman, Esq., appointed pursuant to the Criminal Justice Act ("CJA"), nunc pro tunc to June 6, 2007, is therefore granted.

SO ORDERED.

Brooklyn, New York
September 25, 2007